

OPEN SPACE COUNCIL
MINUTES
Legislative Hall
Senate Hearing Room, Second Floor
Dover, DE
September 11, 2007
9:00 a.m.

ATTENDANCE

Council Members

Lynn W. Williams, Chairperson
Paul Boswell, Esq.
Nathan Hayward
D. Wayne Holden
Harvey Marvel
William Powers, Jr.
Rep. Robert Valihura

Advisory to:

Charles A. Salkin, Parks & Recreation, DNREC
(Acting for Secretary Hughes)

Ex-Officio

Charles A. Salkin, Parks & Recreation, DNREC

Staff

Matt Chesser, Parks & Recreation, DNREC
Phil Carpenter, Fish & Wildlife, DNREC
Michael Valenti, Delaware Forest Service, DDA
Ron Vickers, Parks & Recreation, DNREC
LeeAnn Walling, Office of the Secretary, DNREC
Robert Ehemann, Parks & Recreation, DNREC
Rose Ryödi, Parks & Recreation, DNREC

Visitors:

Heather Keegan, DEDO

I. Call to Order/Announcements

Mrs. Lynn Williams, Chairperson, called the Open Space Council meeting to order at 9:09 am. She welcomed Council members and visitors. Mrs. Williams asked all present to remember 9-11-2001. On that date the Open Space Council was meeting at the Judge Morris House when reports came in about the tragedy in New York and Washington.

Mr. Salkin announced that Secretary Hughes called him this morning and asked him to inform Council that he was ill, to convey his regrets and that Mr. Salkin would sit in for him. Secretary Hughes asked that Mr. Salkin bring forward the Poplar Thicket/ Niemann family property. It is a project that he views as important.

II. Review of Minutes of the June 5, 2007 Meeting

Mrs. Williams asked if there were any corrections to the June 5, 2007 minutes. Hearing none she asked for a motion to approve the minutes. It was moved and seconded to accept the minutes as written.

III. Financial Report

Mr. Vickers presented the financial report. The remaining Realty Transfer Tax funds for FY2008 are \$6,842,958.07. There were six previously approved projects totaling \$5,514,000.00 that are waiting for settlement. Therefore, the balance available for the remainder of FY2008 is \$1,328,958.07. The Open Space Program is anticipating a \$3.0 million refund of Federal funds related to the Coastal and Estuarine Land Conservation Program (CELCP) related to the purchase of the Eagle Farms property. This money will not be available until the first part of 2008. After receiving the CELCP funds, the total for FY2008 will be \$4,328,958.07.

The Conservation Fund- Fowler property in the Milford Neck State Resource Area near Abbott's Millpond was settled on July 30, 2007.

Currently there are no commitments for FY2009 and FY2010 funds.

Mr. Vickers also provided an updated Open Space Inventory.

The Council entered into a general discussion regarding how to increase the current \$9.0 million of funding used by the Open Space Program.

- Mr. Hayward asked Mrs. Williams if she had any discussion with the General Assembly regarding increasing the amount of funds for Open Space.
- Mrs. Williams said it would be a good time to start discussions once the Governor's office starts to formulate its budget. It could be presented as what has been purchased in each of the counties and what some of the known priorities are. However, there are always unanticipated opportunities. The question should be asked of the General Assembly if it wants the Council to limit itself to working on \$9.0 million worth of property every year or should it give the Council the opportunity to do more.
- Rep. Valihura said this was a good way to start the process. He urged the Council to come up with a plan and be persistent in presenting it. He noted that other agencies were successful when they stayed the course and continued to present their message. He also suggested

- being in touch with candidates in the upcoming elections to find out their stance on open space protection.
- Mrs. Williams asked the Council members if they thought the Council should take a pro-active stance.
 - Mr. Hayward noted that some years were better than others when the legislators were involved in helping get additional funds. We are losing ground because the value of our funds has dwindled with the cost per acre of land increasing. He hopes the Council would work together and be pro-active with Mrs. Williams as the spokesperson.
 - Mr. Boswell agreed that the Council should be pro-active in trying to secure additional funds.
 - Mr. Holden also agreed the Council should be pro-active. He also thought the Council should be the clearinghouse for all open space projects. He did not agree with other conservation organizations going to the Bond Bill committee to get funding for specific projects. He realizes many Council members wear more than one hat. However, he believes the land preservation projects should come before the Council and this would help move to the next level of funding by showing the partnerships and leveraging of public funds. He would encourage approaching foundations. He believes there are opportunities now because of the state of the real estate market. Some companies are pulling out of the market want to get their contingent liabilities off their books. It may be appropriate to tie funding more closely to the realty transfer tax. When sales are strong the program should receive more funding. We also need to look more closely at the transfer of development rights and encourage this on a state-wide basis. He also state he realizes there are finite pots of money and many competing requests.
 - Mr. Marvel agreed the Council needs to be pro-active. He said the Council needs to get away from being locked in to just \$9.0 million. He said this is going backwards. At a minimum there should be an adjustment for inflation.
 - Mr. Powell also agreed the Council should be pro-active. He felt the Council has been inactive on this and that other conservation interests were more active. He agreed that the transfer of development rights should be a statewide program. He also noted that some companies are not taking on any more construction projects. Transfer taxes are good, but the Council needs more sources of funds.
 - Mr. Vickers noted that in 2001 the Council and others helped get the realty transfer tax funding switched around. Previously it was \$3.0 million for Open Space and \$7.0 million went to the Land & Water Conservation Trust Fund. Now \$9.0 million comes to Open Space and \$1.0 million goes to the LWCTF. During that same time folks were helping to secure a funding source for aglands preservation. Now that program receives \$10.0 million from realty transfer taxes annually.
 - Ms. Walling said that some people may view this as a total of \$20.0 million per year for "open space" preservation and that is enough. It may be hard to overcome this issue.

- Mr. Chesser noted that in other discussions with legislators or agencies it was thought that funds coming through the Bond Bill were coming into the Open Space Program as opposed to going to specific projects outside of the full review of this Council. He emphasized we need to make sure that priority projects are a priority across all the qualifying state programs.
- Rep. Valihura believed this would require a concerted effort by the Council to change the legislative dynamic. He agreed that all of the open space projects should come through the Council. He also realizes there still will be legislator or outside agendas. However, he thinks this is just readjusting to what the spirit of the Council function is- to coordinate open space purchases. Farm land purchases would still go through the aglands program.
- Mrs. Williams said part of the intent of creating the Open Space Council was to remove politics from the picture and work with the land managing agencies to establish priorities for protection. She felt it was time to get back to that. She thanked everyone for the good discussion and would initiate some meetings with the administration.
- Mr. Salkin welcomed any support to increase the amount of money available to purchase open space. The cooperation with outside conservation organizations is good, but not always equal. It may help to have the Council or some other entity serve as a clearinghouse. Recently the opportunity to acquire high quality and high priority lands was stymied because of limited funds. He urged the Council to consider a more effective way of dealing with the LWCTF which stands at \$47.0 million. Reviewing this trust fund and seeking more appropriations would be beneficial.
- Mr. Hayward agreed on the importance of cooperation. However, he would rather the Council work on the substance of increasing funds in a cooperative manner, so as not to be perceived as territorial grabbers by establishing a clearinghouse.
- Mrs. Williams again thanked the Council members for their input.

IV. Agency and Public Presentations

Mrs. Williams presented the following items to Council:

1. Correspondence received in support of the acquisition of the Sohn property:
 - a. A letter from the White Clay Creek Watershed Management Committee to Mrs. Williams
 - b. Email from the United Auto Workers- CAP Council to Mr. Vickers
 - c. A letter from Dorothy Miller, Coalition for Natural Stream Valleys, Inc. to Mrs. Williams
2. Mrs. Williams received a letter from the Delaware Nature Society encouraging the Open Space Council to support a Corridor Management Plan for the Red Clay Creek Scenic Byway. Mrs. Williams circulated a letter to be sent from the Council to Secretary Carolann Wicks at the Department of Transportation in support of the Plan. At a later point in the meeting after the letter was circulated to the Council, Mrs. Williams asked Council's approval to sign the Red Clay Byway letter. Rep. Valihura moved that Council sign the letter. Mr. Hayward seconded. The motion passed, with Mr. Powell abstaining.

Delaware Land & Water Conservation Trust Fund Projects

Mr. Ehemann introduced himself as the Grants Coordinator for Parks & Recreation. He said his major responsibility is handling the municipal side of the DE Land and Water Conservation Trust Fund by assisting communities, counties and local park districts. The Grants Program, established in 1986, now operates off of the interest generated by the \$47.0 million Land & Water Conservation Trust Fund. From this trust fund \$1.5 million of the interest is used for two grants programs. One half of this interest (\$750,000) goes towards Greenway Grants and the other \$750,000 goes to the Delaware Trust Fund Grants.

The 2007 DTF grant applications are the subject of this meeting's discussion. Local communities that apply must come up with 50% of the grant request. The application process is very competitive and applicants receive grants after demonstrating the ability to maintain the property according to the application. So far, statewide 36 municipalities have received grants. The DTF grants fund three types of projects: land acquisition; outdoor recreation amenities; and planning & design.

Below is the list of current applications:

2007 DTF Park Applications**DTF**

Sponsor	Location	Description	Request
Dagsboro - Sussex County	Katie Helm Town Park	Install playground equipment and pavilion - 2.33acres	\$30,000
Dover - Kent County	Millcreek subdivision	Install play equipment and benches - 1.86acres	\$20,000
Dover - Kent County	Schutte Park	Install playground equipment at John W. Pitts Recreation Center - 7acres	\$40,000
Fenwick Island - Sussex County	Town Park	Install playground equipment (Waiver signed) 0.2acres	\$10,727
Laurel - Sussex County	Laurel River Park	Install lighting, park benches and tables - 5acres	\$37,500
Lewes - Sussex County	Canalfront Park	Construct a pavilion and restroom - 1.25acres	\$146,000
New Castle - New Castle County	Glasgow Regional Park	Construct a 20,000 s.f. concrete skate park - 286acres	\$200,000
Newark - New Castle County	Handloff Park	Install subsurface drainage system - 15.8acres	\$10,000
Odessa - New Castle County	Memorial Park	Install picnic tables and benches - 1.86acres	\$1,800
Rehoboth Beach - Sussex County	Grove Park	Install fitness cluster equipment, pathways and landscaping - 2acres	\$52,500

Slaughter Beach - Sussex County	Pavilion and Bath House	Install pavilion and bathhouse - 0.1 acres	\$30,000
Smyrna - Kent County	Sunnyside Park	Install playground equipment, pavilion, picnic tables and landscaping - 6 acres	\$45,000
Wilmington - New Castle County	Kruse, Conaty and Haynes Parks	Install playground equipment - three parks	\$150,000
Wilmington - New Castle County	Woodlawn, Browntown and Judy Johnson Parks	Install a spray park because of closure of Canby Pool (\$100,000 per spray park) - three parks	\$100,000
Townsend - New Castle County	Townsend Community Park	Install play equipment, skate park, tennis courts, and a baseball field, horseshoe pits, walking paths and gazebo - 11 acres	\$100,000
		Total Request	\$973,527
2007 Grant funds		\$750,000	
Contingency Reserve		<u>\$361,118</u>	
	Total Available	\$1,111,118	
Small Grant Contingency		\$30,000	
Contingency Reserve Balance		<u>\$107,591</u>	
	Grant Balance	\$137,591	

- Mr. Ehemann said this year the Grants Committee is proposing using its Contingency Reserve because applications exceeded the \$750,000 annual budget. The Contingency Reserve comes from 2 sources: monies encumbered for a project that is subsequently withdrawn and monies carried over from years when the total grant requests were less than \$750,000. The current Contingency Reserve balance is \$361,118.
- Mr. Salkin asked Council to endorse a \$30,000 grant contingency that gives the Department flexibility to make decisions on small projects that may need to move ahead quickly, independent of the Council's annual review. He said these opportunities may or may not come up in any given year. All applicants would still have to meet all of the eligibility requirements.
- Mrs. Williams asked if there were any questions for discussion from Council, if not she asked for a motion to approve the 2007 DFT Park Applications as presented.
- During discussion, some Council members questioned whether the 2 applications asking for funds for skateboarding parks (Glasgow Regional Park and Townsend Community Park) was appropriate considering most of the work before the Council consists of protecting open space that would not involve a lot of impervious surface or concrete.

- Mrs. Williams asked if Council wished to make exceptions in approving these projects by singling out these two parks. She asked if Council wished to withhold approving the two projects and that the Division goes back to the municipalities to ask them to come up with a greener alternative. She also asked the Division whether these communities had a list of projects other than skateboarding because of the difference in recreational values the Open Space Council has. Maybe the priorities could be reordered..
- Mr. Hayward asked Mrs. Williams for an up or down vote.
- Mrs. Williams asked for a motion to approve the 2007 DTF Program Grant Application list as presented by a show of hands. The count was a tie, three for and three against.
- Mr. Hayward asked Mrs. Williams to call for a vote so that all those in favor of voting for all the program grants, except the two skateboard parks have an up or down vote.
- Mrs. Williams asked for a vote on recommending all of the grants except for the Glasgow and Townsend applications. The vote was unanimous in favor of such a recommendation.
- More discussion ensued regarding the appropriateness of skateboard parks for this type of funding and if there was a demand for this type of recreational area. Mr. Salkin noted this was a growing demand and trend across the country. Mr. Powell said he knows his constituents are looking for this type of opportunity.
- Mr. Powell made a motion that Council recommends the Glasgow application as presented, including the skateboard area. The motion was a seconded.
- Mrs. Williams asked if there was further discussion. Hearing none, she asked for a vote on the motion. It passed 4 to 2.
- Mr. Powell made a motion that Council recommends the Townsend application as presented, including the skateboard area. The motion was a seconded.
- Mrs. Williams asked if there was further discussion. Hearing none, she asked for a vote on the motion. It passed 4 to 2.
- Representative Valihura suggested that the DTF grant application recommendations be removed from the duties of the Open Space Council. He suggested it be a function of the Parks Council or the Greenways and Trails Council.
- Mr. Salkin asked if Council wished staff to pursue this option. He said this subject had been discussed internally but never formally presented to the Council.
- Mrs. Williams asked if Council would be willing to remove the DTF grant application recommendations from the duties of the Open Space Council and asked for a motion.
- Representative Valihura made a motion in favor of removing the DTF grant application recommendations from the Open Space Council. The motion was second by Mr. Hayward.

- Mrs. Williams asked if there was any further discussion. Hearing none, she asked for a vote on the motion. The motion passed with a unanimous vote.
- Following up on earlier discussions, Rep. Valihura asked staff to explore a process to deal with using the \$47 million Land & Water Conservation Trust Fund more profitably. He said he would prefer to see money earmarked from the State's General Fund for the DTF Grants and Greenways Grants. The Open Space Program could do something else with the \$47 million. He would like staff to come back to the next Open Space Council meeting with a recommendation.
- Mr. Salkin said he would be glad to start the discussions. He needed guidance from the Department of Finance and the State Treasurer's Office because these were significant money management/investment issues. He will report back at the next meeting.
- Mr. Hayward said the issue was whether Council could better spend or invest this money by taking the opportunity to purchase land or rights of land today as opposed to looking to a yield of 2.5% or 3% to pay for skateboard parks. He said he would rather Council spend this \$47 million on Open Space.
- Mr. Salkin said this was a compelling argument and agreed that putting away \$47 million and only spending \$1.5 million of interest was not a good way to do business. He suggested the trust fund could potentially be generating more interest.
- Mrs. Williams asked Mr. Vickers to bring Council up to date with the SRA lawsuit.
- Mr. Vickers said the lawsuit is now a class action suit and staff is once again getting more requests for information on specific properties.
- Rep Valihura asked who the plaintiff was and who the defendant was.
- Mr. Vickers said the plaintiffs are three individual landowners; one from each county. They are suing DNREC, Secretary Hughes and the three counties. It recently became a class action suit and now involves all of the landowners included in the SRA maps, approximately 7,000. The Court of Chancery is still reviewing the case and may decide before the end of the year.
- Rep. Valihura asked who the attorneys are involved in the suit.
- Mr. Vickers said DNREC is represented by Robert Phillips, DAG from the Department of Justice and plaintiffs are represented by Mr. Rich Abbott.
- Pending no further discussion, Mrs. Williams asked for a motion to go into Executive Session to discuss the acquisition projects. Mr. Powell moved that Council go into Executive Session. Mr. Holden seconded the motion. The Council concurred.

V. Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 10:39 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 11:45 a.m.

VI. Project Recommendations

Based on discussion at Executive Session, the Council determined the following:

- A. KIO Associates (Campanelli) – Lower DE SRA: ±160 acres, large wooded tract in SE NCC. Property is one of the few remaining unprotected/undeveloped large wooded complexes with two endangered plant species. Property is in proximity to other protected lands such in the Blackbird corridor. It was moved and seconded to recommend the purchase the KIO property at the contract price of \$1.3 million contingent upon receiving federal funds towards the purchase price.
- B. Fowler/Morton Lots – Milford Neck SRA: ±4.5 acres consisting of five ¾-acre recorded lots at an offered price of \$100K per lot totaling \$500,000. It was moved and seconded that staff return to Mr. Fowler and offer a price not to exceed \$250,000.
- C. Sohn Property – White Clay Creek SRA: 1.79 acres including forested slopes and an architecturally significant residence built in 1954 along White Clay Creek. Property is listed for \$499,900. An appraisal is pending. There was no motion at this time. Staff will continue negotiations with property owners.
- D. Poplar Thicket- Neimann Property – Inland Bays SRA: ±92 acres of open land, marshland and a National Register site for Early and Late Woodland Period (1400 to 1600). Appraisal is pending. Adjacent 118 acre property will be going to The Nature Conservancy and then TNC will work with the State to transfer it to DNREC. Mr. Hayward moved that staff pursue this property for purchase saying it was a significant contribution to Open Space. It was moved and seconded to recommend staff pursue purchase of the property.
- E. Neil Property- White Clay Creek SRA: ±2 acres of open land with a residence and an inholding at White Clay Creek State Park. Appraisal is pending. Council recommended that staff return to Council after more negotiations.
- F. Durham Property- Brandywine Creek SRA: ±2 acres of forested slopes adjacent to Brandywine Creek State Park. Staff will continue discussions with landowner.

VI. Next Meeting and Adjournment

Mrs. Williams asked for a motion to adjourn the meeting. Motion was made by Mr. Powers and seconded by Mr. Holden. The meeting adjourned at 11:54 a.m.

The next Open Space Council meeting for 2007 will be held on Tuesday, December 11, 2007, 9:00 a.m. at the Legislative Hall, Second Floor, Senate Hearing Room, Dover, Delaware

Respectfully submitted
Rose Ryödi